

# **FEDERAL CRIMINAL PROCEDURE: THE BASICS**

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# WHAT IS CRIMINAL PROCEDURE AND WHAT ARE THE SOURCES OF PROCEDURAL LAW

- The origins of criminal procedure
- Stages in a Criminal Prosecution
  - Overview
  - Investigation
  - Adjudication
- Contemporary Sources of Procedural Law
  - Federal and State Courts
  - Centrality of U.S. Supreme Court Decisions



# INCORPORATION OF BILL OF RIGHTS

- What is Incorporation Doctrine?
  - Is There a Debate? You bet!
  - Full Incorporation v. Selection Incorporation
  - Original Intent?
  - The Cryptic Meaning of “Due Process”
- The Current State of Incorporation Doctrine

# FOURTH AMENDMENT: THE CORNERSTONE OF FEDERAL CRIMINAL PROCEDURE

- What is it and what does it protect?
- Initial Issues:
  - Standing to Raise Fourth Amendment Claims
  - Exclusionary Rule
  - “Persons”
  - “Houses”
  - “Papers and Effects”



# THE LAW OF THE “SEARCH”

- What is the meaning of “search”?
- *Katz v. United States*
  - *The law before*
  - *The law now*
- Surveillance, “false friends”, open fields, sniffing dogs (of all kinds), and modern methods of gathering evidence
  - Electronic tracking devices, pen registers, and the temperature of a gentlelady’s bath

# WHAT IS A SEIZURE?

- Why is the term significant?
- General rule
- Seizure of Property
- Seizure of Persons
  - *Terry v Ohio*
  - *Mendenhall* and the “Reasonable Person” Test



# PROBABLE CAUSE

- The origins of probable cause in the Constitution
- General principles and definitions
- Objectivity?
- Searches and arrests
- Warrants
- How to determine probable cause
  - Tests and reasonableness

# YOU'RE UNDER ARREST, I THINK

- What is an arrest?
- Is it different than a seizure?
- Arrest warrants
- Arrests at third-party homes
- Executing an arrest and when entry to home is permitted
- Use of force in making an arrest



# DON'T YOU NEED A WARRANT?

- Search warrants and Constitutional principles
- How the government obtains a warrant
  - Application process
  - Warrant requirements
  - Execution of warrant
    - Knock-and-announce rule
    - Exceptions to the rule
  - Search of premises open to the public; homes and cars
  - Detention of suspects during searches

# NO WARRANT; NO PROBLEM: EXIGENT CIRCUMSTANCES AND SEARCH INCIDENT TO ARREST

- Exigent circumstances
  - Inside and outside the human body
  - Entry and search of private homes
- Search incident to arrest
  - General principles and rules
  - *Chimel v. California*
  - *United States v. Robinson*
  - *New York v. Belton*
  - *Thornton v. United States*



# “PLAIN VIEW” SEARCHES

- What is a plain view search?
- The elements:
  - Lawful vantage point
  - Right of access
  - Right to Seize is “Immediately Apparent”
- The seminal case: *Arizona v. Hicks*
- Other considerations

# SEARCH OF VEHICLES AND THEIR CONTENTS

- Exceptions to the search warrant rule
- *Carroll v. United States*
- *Chambers v. Maroney*
- *Coolidge v. New Hampshire*



# CONSENT SEARCHES

- General principles
- Voluntary consent
- Breadth of search
- Third-party consent
- “Apparent authority”

# ***TERRY V. OHIO***

- *Terry v. Ohio* and the birth of the *Terry* stop
- What is reasonable suspicion?
- *Terry* stop v. arrest: a major distinction
- “Less intrusive means”
- When is *Terry* stop appropriate?
- Other issues



# STANDING AND THE FOURTH AMENDMENT

- Why is standing important?
- *Rakas v. Illinois*: Before and After
  - Automatic standing
  - Search of another's residence with and without owner
  - Search of automobile when owner is absent
  - Search of another's automobile

# EXCLUSIONARY RULE

- Overview
- The historical evolution of the rule
- *Weeks v. United States*
- The States
  - *Wolf v. Colorado*
  - *Rochin v. California*
  - *Mapp v. Ohio*



# INTERROGATION

- What are the Constitutional issues implicated?
- Common law antecedents
- Due Process Clause: Voluntariness Requirement
- Remedies for violations of the right

# TAKING THE FIFTH: PROTECTIONS AGAINST SELF-INCRIMINATION

- What is the Fifth Amendment?
  - The elements
  - The rationale
  - How it affects interrogation
  - Remedies for violations
- *Miranda v. Arizona* and the law of interrogation
  - What is *Miranda*?
  - How *Miranda* changed our culture



# I NEED A LAWYER!:

## THE SIXTH AMENDMENT

- The Constitutional right to legal counsel
- *Massiah v. United States* and its progeny
- Waiver of right to counsel
  - When is a waiver valid?
- Scope of exclusionary rule
- Fruit of poisonous tree doctrine
- Sixth Amendment and *Miranda*
- Entrapment: What is it and will it ever be relevant?

# CONCLUSION

- Can we have substantive justice without procedural justice?
  - Is process always due?
  - John Adams and the Boston Massacre
  - Why every lawyer needs to be familiar with criminal procedure
  - Can we divorce rights from duties?
  - Getting the bad guys must be done in procedurally proper manner
  - Other closing thoughts

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